

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chris Olmsted	Team: Squad #09	CCRB Case #: 202103922	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 06/11/2021 11:10 PM, Wednesday, 12/08/2021 10:38 AM	Location of Incident: East 53rd Street and Avenue J; at the CCRB	18 Mo. SOL 12/11/2022	Precinct: 63		
Date/Time CV Reported Thu, 06/17/2021 1:53 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/30/2021 10:55 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Gary Leite	05022	948376	063 PCT
2. POM Michael Cioffi	24252	963217	063 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Randi Knepper	12582	967569	063 PCT
2. POM John Brennan	12838	960275	063 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Cioffi	Force: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Police Officer Michael Cioffi used physical force against § 87(2)(b)	
B.SGT Gary Leite	Force: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Sergeant Gary Leite hit § 87(2)(b) against a vehicle.	
C.SGT Gary Leite	Discourtesy: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Sergeant Gary Leite spoke discourteously to § 87(2)(b)	
D.SGT Gary Leite	Abuse: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Sergeant Gary Leite frisked § 87(2)(b)	
E.SGT Gary Leite	Abuse: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Sergeant Gary Leite searched § 87(2)(b)	
F.POM Michael Cioffi	Abuse: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Police Officer Michael Cioffi frisked § 87(2)(b)	
G.POM Michael Cioffi	Abuse: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Police Officer Michael Cioffi searched § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Officer(s)	Allegation	Investigator Recommendation
J.SGT Gary Leite	Untruthful Stmt.: On December 8, 2021, at the CCRB, Sergeant Gary Leite provided a false official statement to the CCRB.	

Case Summary

On June 17, 2021, § 87(2)(b) filed this complaint in person at the 63rd Precinct stationhouse. IAB filed the complaint under log number § 87(2)(b) and referred it to the CCRB under log number § 87(2)(b). The CCRB received the complaint on June 30, 2021.

On June 11, 2021, at approximately 11:10 p.m., at the intersection of East 53rd Street and Avenue J in Brooklyn, Police Officer Michael Cioffi of the 63rd Precinct used physical force against § 87(2)(b) (**Allegation A: Force**, § 87(2)(g)) and Sergeant Gary Leite of the 63rd Precinct hit § 87(2)(b) against a vehicle (**Allegation B: Force**, § 87(2)(g)). During the incident, Sergeant Leite spoke discourteously to § 87(2)(b) (**Allegation C: Discourtesy**, § 87(2)(g)). Sergeant Leite frisked and searched § 87(2)(b) bag (**Allegation D: Abuse of Authority**, § 87(2)(g)). PO Cioffi frisked § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g)) and PO Cioffi allegedly searched § 87(2)(b) person (**Allegation F: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) received a summons during this incident for Public Urination. (Board Review [BR] 01).

NYPD Legal provided material body-worn camera (BWC) videos recorded during this incident from PO Cioffi (BR 02) and Sergeant Leite (BR 03). § 87(2)(g), § 87(4-b)

On December 8, 2021, during his interview at the CCRB, Sergeant Leite made false official statements. (**Allegations J: Untruthful Statements**, § 87(2)(g))

Findings and Recommendations

Allegation (A) Force: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Police Officer Michael Cioffi used physical force against § 87(2)(b)
Allegation (B) Force: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Sergeant Gary Leite hit § 87(2)(b) against a vehicle.

It is undisputed that on June 11, 2021, at approximately 11:10 p.m., Sergeant Leite and PO Cioffi forcibly stopped § 87(2)(b) at the intersection of Avenue J and East 53rd Street in Brooklyn, that PO Cioffi used physical force against § 87(2)(b) that Sergeant Leite hit § 87(2)(b) against a vehicle, and the incident resulted in § 87(2)(b) receiving a summons for urinating in public.

§ 87(2)(b) stated to the CCRB that as he was walking to the southeast corner of the intersection of Avenue J and East 53rd Street a vehicle pulled in front of him, an officer exited it, and the officer immediately tried to grab him. § 87(2)(b) “reflexively” turned away from the officer and saw a second officer running toward him. The second officer wrapped his arms around § 87(2)(b) and tackled him onto the back of the parked vehicle. The officers issued § 87(2)(b) a summons for urinating in public, which he denies. (BR 04)

PO Cioffi’s BWC recording begins while he is still inside his RMP. It shows, beginning at 00:12, that PO Cioffi stopped the RMP, exited it, and turned to § 87(2)(b). § 87(2)(b) was walking around the trunk of the vehicle, which was protruding into the crosswalk. PO Cioffi approached § 87(2)(b). The recording shows Sergeant Leite to be approximately fifteen feet behind § 87(2)(b) and PO Cioffi and walking through the intersection toward them. § 87(2)(b) takes three steps back from PO Cioffi but does not turn his body. PO Cioffi grabs the front of § 87(2)(b) sweatshirt. § 87(2)(b) is approximately four feet from the trunk of the police vehicle. Two seconds after PO Cioffi grabs § 87(2)(b) sweatshirt, § 87(2)(b) turns to face Sergeant Leite. PO Cioffi is still holding § 87(2)(b) sweatshirt. Sergeant Leite wraps his arms around § 87(2)(b) torso at approximately the level of § 87(2)(b) biceps and uses his body to force § 87(2)(b) backwards onto the trunk of the RMP. During these moments, PO Cioffi is holding § 87(2)(b) right wrist and § 87(2)(b) left

hand is visible, open, and empty. He is not flailing his arms or holding his bag. PO Cioffi's recording does not capture audio during these moments. (BR 02)

Sergeant Leite's recording begins 02:08 seconds after PO Cioffi's recording begins and does not capture information relevant to these allegations. (BR 03)

PO Cioffi noted in his memobook, [case-corrected] "Deft was observed urinating on a public sidewalk when approached on foot in uniform and giving verbal commands deft did attempt to run away and was grabbed to prevent him from running away. Deft was offered medical attention and refused on bwc no injuries" (BR 05)

Sergeant Leite noted in his memobook, "Male observed urinating on corner, I exited vehicle and approached on foot, as Officer Cioffi pulled in front of him and told him to stop subject began backpedaling and attempted to run away, I wrapped my arms around him and pushed him into rear of my vehicle to prevent him from running away." (BR 05)

Sergeant Leite prepared a Threat Resistance and Injury Report (TRI) related to this incident in which he noted that members of service used "wrestling/grappling" against § 87(2)(b) due to "active resistance towards MOS." Under "Details of Incident" he wrote only "BWC reviewed." On the same TRI Sergeant Leite noted "No" under "Subject Used Force?" and noted "Fleeing Suspect" as the "Reason for Force" under "Actions Taken by Reporting MOS." (BR 06)

PO Cioffi stated to the CCRB that while driving an RMP he observed § 87(2)(b) urinating in public. PO Cioffi let Sergeant Leite out of the vehicle, drove past § 87(2)(b) exited the RMP, and began approaching § 87(2)(b) on foot. § 87(2)(b) was in the intersection of East 53rd Street and Avenue J and Sergeant Leite was walking toward him from the east. PO Cioffi ordered § 87(2)(b) to come to him. He did not recall if he made any other statements. § 87(2)(b) began to move backward. PO Cioffi believed that § 87(2)(b) intended to flee because in his experience as a police officer people who back away from the police usually attempt to flee. PO Cioffi approached § 87(2)(b) grabbed the front of § 87(2)(b) sweatshirt, and placed § 87(2)(b) against the RMP. PO Cioffi stated he did not know where Sergeant Leite was at this point.

PO Cioffi initially stated he did not know whether Sergeant Leite used physical force against § 87(2)(b) during the incident. PO Cioffi could not recall why he noted in his memobook that § 87(2)(b) had declined medical attention. PO Cioffi stated he did not remember whether he observed Sergeant Leite wrap his arms around § 87(2)(b) and push § 87(2)(b) onto the police vehicle. PO Cioffi watched his BWC recording from 00:00 to 01:42 and stated he saw in the recording that Sergeant Leite wrapped his arms around § 87(2)(b) and pushed § 87(2)(b) onto the police vehicle during the incident, but that seeing the video did not refresh his independent recollection of the incident. (BR 07)

Sergeant Leite stated that he observed § 87(2)(b) urinating in public, got out of the police vehicle approximately ten yards from § 87(2)(b) and began approaching him on foot. PO Cioffi drove past § 87(2)(b) parked the vehicle approximately three yards from § 87(2)(b) got out, and began approaching § 87(2)(b) from the other side. As PO Cioffi approached § 87(2)(b) PO Cioffi stated, "sir, stop." Neither Sergeant Leite nor PO Cioffi made any prior comments to § 87(2)(b) § 87(2)(b) "bladed his body and started to backpedal," which Sergeant Leite understood as "an attempt to run away." Sergeant Leite was approximately "a few feet" from § 87(2)(b) and was about to activate his BWC, but upon seeing § 87(2)(b) take these actions, Sergeant Leite "wrapped both [his] hands around § 87(2)(b) torso, his shoulders" and "guided" § 87(2)(b) to the back of the parked RMP. Sergeant Leite clarified that "guiding" meant he pushed § 87(2)(b) against the car. Sergeant Leite stated § 87(2)(b) was trying to resist by pulling away from Sergeant Leite and trying to move southbound.

Sergeant Leite watched PO Cioffi's BWC footage from 00:00 to 01:44 and from 00:10 to 00:17. These clips show PO Cioffi's initial interactions with § 87(2)(b) and show that § 87(2)(b) did not blade his body away from PO Cioffi. Sergeant Leite testified that the blading occurred only from his perspective, that it happened before the clips he watched, and that it happened before he activated his BWC. (BR 08)

The following Patrol Guide Procedures were in effect on June 11, 2021:

Patrol Guide Procedure 221-01 stated force may be used “when it is reasonable to place a person in custody or to prevent escape from custody.” It stated, “MOS [Members of Service] will use only the reasonable force necessary to gain control or custody of a subject.” It stated, “In determining whether the use of force is reasonable, members of the service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject’s violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.” (BR 09)

Patrol Guide Procedure 221-02 stated officers must “apply no more than the reasonable force necessary to gain control” and must “assess the situation continually and adjust the use of force as necessary.” (BR 10)

BWC footage of the incident shows that § 87(2)(b) took three steps back from PO Cioffi when PO Cioffi approached § 87(2)(b). § 87(2)(b) did not turn his body away from PO Cioffi and did not attempt to leave the immediate area. PO Cioffi grabbed § 87(2)(b) sweatshirt and maintained his hold on it. Sergeant Leite ran to the pair of them, wrapped his arms around § 87(2)(b) and hit § 87(2)(b) against a vehicle.

§ 87(2)(b) denied that he either tried or intended to flee the scene. PO Cioffi stated § 87(2)(b) backward steps did not constitute flight. He stated he thought § 87(2)(b) intended to flee, and that he grabbed § 87(2)(b) proactively based on that belief. Sergeant Leite recorded in his memobook that § 87(2)(b) “began backpedaling and attempted to run away.” BWC footage shows no such attempt occurred. Sergeant Leite testified to the CCRB that § 87(2)(b) “bladed his body and started to backpedal,” and that he interpreted those actions as “an attempt to run away.” He stated he wrapped his arms around § 87(2)(b) and forced § 87(2)(b) back against the parked car to prevent § 87(2)(b) from fleeing.

PO Cioffi’s grab of § 87(2)(b) sweatshirt ensured § 87(2)(b) could not flee the scene without breaking free of an officer, § 87(2)(g). PO Cioffi testified to specific actions § 87(2)(b) took that gave PO Cioffi cause to believe § 87(2)(b) might flee, and those actions appear on BWC. § 87(2)(g)

Patrol Guide Procedure 221-02 required Sergeant Leite to “assess the situation continually,” “adjust the use of force as necessary,” and “apply no more than the reasonable force necessary to gain control.” § 87(2)(g)

§ 87(2)(b) The nature and severity of § 87(2)(b) crime were low, he presented no threat or harm to himself or officers, he was alone, he had no known history of violence, there were no agitators or hostile onlookers, and § 87(2)(b) was not apparently under the influence of any substance that would impact his pain tolerance or increase the likelihood of violence.

When Sergeant Leite hit § 87(2)(b) against a vehicle, PO Cioffi had already begun using

physical force against § 87(2)(b) § 87(2)(g)

Allegation (C) Discourtesy: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Sergeant Gary Leite spoke discourteously to § 87(2)(b)

At 01:41 in PO Cioffi's BWC footage from the incident, Sergeant Leite states to § 87(2)(b) "we're stopping you for fucking pissing, bro." (BR 02).

Sergeant Leite stated to the CCRB that he did not recall using profanity during the incident. After watching the relevant BWC footage, Sergeant Leite identified himself as the speaker. He stated he understood from the video that he made the statement but that watching it did not help him independently recall doing so.

Patrol Guide Procedure 200-02 states officers pledge to "maintain a higher standard of integrity than is generally expected of others" and to "render [their] services with courtesy and civility." (BR 11)

§ 87(2)(g)

Allegation (D) Abuse of Authority: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Sergeant Gary Leite frisked § 87(2)(b)

Allegation (E) Abuse of Authority: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Sergeant Gary Leite searched § 87(2)(b)

Allegation (F) Abuse of Authority: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Police Officer Michael Cioffi frisked § 87(2)(b)

Allegation (G) Abuse of Authority: On June 11, 2021, at the intersection of East 53rd Street and Avenue J in Brooklyn, Police Officer Michael Cioffi searched § 87(2)(b)

§ 87(2)(b) stated that during the incident Sergeant Leite took, opened, and searched a soft bag § 87(2)(b) was wearing across his chest when officers stopped him. He stated he did not consent to officers searching the bag and had nothing in the bag that was heavy, nothing that was rectangular, and nothing that was bulky. § 87(2)(b) also stated that PO Cioffi frisked him and entered his front and back pockets. (BR 04)

Between 01:48 and 02:03 in PO Cioffi's BWC recording of the incident, PO Cioffi turns § 87(2)(b) around to face the trunk of the vehicle and PO Cioffi frisks § 87(2)(b) waistband, pockets, and legs. At 02:02, Sergeant Leite appears. He is facing § 87(2)(b) and PO Cioffi and looking in their direction. During this time, PO Cioffi's camera does not continuously capture what PO Cioffi does with his hands. Between 06:02 and 08:20, Sergeant Leite repeatedly appears holding § 87(2)(b) bag. (BR 02)

Sergeant Leite's BWC recording begins 02:08 seconds after PO Cioffi's recording begins and does not capture information relevant to these allegations. (BR 03)

PO Cioffi stated that when officers first interacted with § 87(2)(b) § 87(2)(b) was tensing up, yelling, flailing his arms, and holding a bag tight to his body. PO Cioffi did not recall what type of bag it was. PO Cioffi used his hands to hold § 87(2)(b) hands away from § 87(2)(b) body to prevent § 87(2)(b) from reaching into his waistband or bag "just in case he had any type of weapon that he possibly could have been reaching for." PO Cioffi did not suspect § 87(2)(b) of having a weapon. PO Cioffi stated there was "no way to tell" what § 87(2)(b) had on him, so for his safety and other officers' safety "we control people's hands." PO Cioffi stated nothing about § 87(2)(b) clothing and no observations of § 87(2)(b) person led PO Cioffi to believe that § 87(2)(b) might have a weapon. PO Cioffi stated he did not know where Sergeant Leite was while he was controlling § 87(2)(b) hands because he "was focused on controlling § 87(2)(b) hands to

prevent him from reaching into his waistband.” PO Cioffi stated he frisked § 87(2)(b) “because he was resisting, I frisked him for my safety, and for the fact that he attempted to flee.” He frisked § 87(2)(b) waistband, pants pockets, legs, sweater pockets, chest, and lower back outside of his clothes. He did not recover anything. PO Cioffi did not recall entering § 87(2)(b) pockets. (BR 07)

Sergeant Leite stated that when he wrapped his arms around § 87(2)(b) and pushed him against the car, § 87(2)(b) and Sergeant Leite were facing each other and the fanny pack or shoulder bag § 87(2)(b) was wearing became wedged against Sergeant Leite’s chest. Sergeant Leite was wearing a bulletproof vest but even through it felt a hard object inside the bag. Sergeant Leite put his hands on the bag and felt a hard object he understood to be the barrel of a firearm. Sergeant Leite removed the bag from § 87(2)(b) and ordered PO Cioffi to restrain § 87(2)(b) which PO Cioffi did. Sergeant Leite opened § 87(2)(b) bag and put his hand inside the bag. He grabbed an item that he determined to be a phone charger. Sergeant Leite no longer suspected the bag to have a firearm.

When asked if any officer frisked § 87(2)(b) Sergeant Leite initially stated, “I didn’t observe it. Again, I was looking at the bag at this time.” Sergeant Leite stated he could not recall whether PO Cioffi searched § 87(2)(b) because Sergeant Leite was focused on talking to § 87(2)(b) and trying to deescalate the situation. Sergeant Leite and his counsel both stated that it is “not necessarily” the case that an officer who was focused on speaking to an individual would be in a position to observe whether another officer was searching that same individual. After watching from 00:00 to 01:22 of his own BWC recording and 00:00 to 02:02 of PO Cioffi’s BWC recording, Sergeant Leite stated he recalled seeing PO Cioffi frisk § 87(2)(b) Sergeant Leite stated he did not order PO Cioffi to frisk § 87(2)(b) Sergeant Leite stated that an officer could frisk an individual “just in case” they decided to take the individual into custody, and that is what PO Cioffi was doing in that moment. Sergeant Leite stated he made no observations of § 87(2)(b) person, for example a bulge or weight in § 87(2)(b) clothing, that raised his suspicion § 87(2)(b) had a firearm on his person, but that “until a person is frisked, and the investigation is completed, I will always consider someone to be – that – could possibly have a weapon. Absolutely.” He stated the video did not refresh his recollections about any other physical interactions between § 87(2)(b) and PO Cioffi. (BR 08)

In *People v. Reid*, 24 N.Y.3d 615 (2014), the Court of Appeals of New York held, “It is irrelevant that, because probable cause existed, there could have been an arrest without a search. A search must be incident to an actual arrest, not just to probable cause that might have led to an arrest, but did not.” (BR 12)

Patrol Guide Procedure 212-11 states, “If a police officer develops a reasonable suspicion that a person is armed and dangerous, the officer may frisk the person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons. Reasonable suspicion that a person is armed and dangerous may arise from the officer’s observations or the facts and circumstances of the encounter including:

- a. Reasonable suspicion that the suspect has committed, is committing, or is about to commit a violent crime (e.g., assault with a deadly weapon, burglary, rape, robbery, etc.)
- b. Observation of something on the person that the officer reasonably suspects is a weapon
- c. A statement by the suspect stopped that she/he is armed
- d. Information known by the officer that the suspect may be carrying a weapon, such as statements from a victim or witness.”

It further states, “An officer may not frisk a person’s bag or other item of personal property unless the officer has reasonable suspicion to believe that the person is armed and dangerous and that the bag or item of personal property could contain a weapon and is within the person’s reach. If the bag/item is soft, the officer should run her/his hands down the outside of the bag/item and open it only if she/he feels the contours of what she/he believes is a weapon.” (BR 13)

Per *People v. Reid*, as Sergeant Leite and PO Cioffi did not arrest § 87(2)(b) Sergeant Leite and PO Cioffi required more than probable cause that § 87(2)(b) committed a violation to frisk and search him. Therefore, Patrol Guide Procedure 221-11 applies.

Sergeant Leite stated that during incidental contact with § 87(2)(b) soft bag Sergeant Leite felt a hard object inside it. He stated he frisked the bag, felt a long, hard object he believed to be the barrel of a firearm, opened and searched the bag based on the frisk, determined the object in question was a long phone charger, and ceased his search. No BWC footage of this frisk and search exists as Sergeant Leite had not yet activated his BWC and PO Cioffi's camera was focused elsewhere. § 87(2)(g)

§ 87(2)(g)
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§ 87(2)(g)

BWC footage shows PO Cioffi frisked § 87(2)(b) PO Cioffi stated to the CCRB, "I frisked him because he was resisting, I frisked him for my safety, and for the fact that he attempted to flee." The Patrol Guide required PO Cioffi to have "a reasonable suspicion that a person is armed and dangerous" to be justified in frisking § 87(2)(b) PO Cioffi stated he did not suspect § 87(2)(b) of having a weapon, that there was "no way to tell" whether § 87(2)(b) was armed, and that he made no observations of § 87(2)(b) that led him to believe § 87(2)(b) was armed during the incident.

§ 87(2)(g)
§ 87(2)(b) alleged PO Cioffi searched him by entering his pockets during the frisk. PO Cioffi stated he did not recall entering § 87(2)(b) pockets. Sergeant Leite stated he could not recall whether PO Cioffi searched § 87(2)(b) BWC footage is not dispositive on the issue. § 87(2)(g)

§ 87(2)(g), § 87(4-b)
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Allegation (J) Untruthful Statement: On December 8, 2021, at the CCRB, Sergeant Gary Leite provided a false official statement to the CCRB.

During his CCRB interview, Sergeant Leite initially stated, “PO Cioffi drove up, stepped out of the driver’s seat, and approached the male and said, “Sir, stop,” at which point the subject turned and bladed his body and started to backpedal, which I perceived him to try to attempt to run away.” He went on to say that he used physical force against § 87(2)(b) to prevent § 87(2)(b) from running away and that seeing § 87(2)(b) blade his body made Sergeant Leite suspect § 87(2)(b) might have a weapon. (BR 08)

Sergeant Leite watched PO Cioffi’s BWC footage from 00:10 to 00:17, a section which begins before PO Cioffi exits his RMP and first interacts with § 87(2)(b) and ends after PO Cioffi has grabbed hold of § 87(2)(b) sweatshirt. § 87(2)(b) backpedals in this clip but does not appear to blade his body. (BR 02)

When asked if the blading of the body to which Sergeant Leite testified is visible in the above section of BWC footage, Sergeant Leite stated, “Yes. Oh – no. I’m sorry. No.” When asked when the blading to which he testified occurred, Sergeant Leite stated, “It’s from my view, because I’m coming up from behind him.” He then stated that the blading occurred before he activated his BWC. (BR 08)

Patrol Guide Procedure 203-08 offers the following definitions:

“FALSE STATEMENT - An intentional statement that a member of the service knows to be untrue, which is material to the outcome of an investigation, proceeding, or other matter in connection with which the statement is made.”

“MATERIAL FACT - A significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome. A material fact may be distinguished from an insignificant, trivial, or unimportant detail.” (BR 15)

DCT Case Number 2016-16097 held that in order to prove a false statement, it must be demonstrated that the statement was not only false but created a “false description of events,” as opposed to statements that merely deny an administrative charge of misconduct. (BR 16)

Sergeant Leite stated that he saw PO Cioffi order § 87(2)(b) to stop and that in response to that order § 87(2)(b) bladed his body away from PO Cioffi and began to backpedal. Sergeant Leite stated he understood those actions to indicate § 87(2)(b) intended to flee the scene and that the physical force he used against § 87(2)(b) was a direct reaction to § 87(2)(b) actions. Sergeant Leite further stated that seeing § 87(2)(b) blade his body away from PO Cioffi contributed to Sergeant Leite’s suspicions that § 87(2)(b) was concealing a firearm. After allegedly encountering a hard object in § 87(2)(b) bag, Sergeant Leite relied upon the totality of circumstances to open and search § 87(2)(b) property. In making these statements, Sergeant Leite identified when and whether § 87(2)(b) bladed his body as facts material to both the investigation into Sergeant Leite’s use of force during the incident and the investigation into Sergeant Leite’s search of § 87(2)(b)

Sergeant Leite stated that § 87(2)(b) bladed his body in response to PO Cioffi’s attempt to stop § 87(2)(b) watched BWC footage that begins when PO Cioffi is still in the RMP, and stated that § 87(2)(b) action occurred before the footage took place. § 87(2)(g) § 87(2)(b) could not have responded to PO Cioffi’s attempt to stop him before the attempt shown in PO Cioffi’s BWC footage because no such attempt occurred. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party. (BR 17)
- PO Cioffi has been a member-of-service for 5 years and has been named as a subject in five other CCRB complaints and ten other allegations, none of which was substantiated. § 87(2)(b)
- Sergeant Leite has been a member-of-service for 12 years and has been named as a subject in 13 other CCRB complaints and 38 other allegations of which two were substantiated.:
 - 201212775 involved a substantiated allegation of Discourtesy – Word against Sergeant Leite. The Board Recommended Command Discipline – A and the NYPD imposed Command Discipline – A.
 - 201603474 involved a substantiated allegation of Abuse of Authority – Stop against Sergeant Leite. The Board recommended Formalized Training and the NYPD imposed Formalized Training.
 - Four allegations of Discourtesy – Word have been pleaded against Sergeant Leite. Specifically, it was substantiated in CCRB 201212775, and it is alleged in open investigations 202006156 § 87(2)(g). In the current case, it was alleged that Sergeant Leite spoke discourteously to § 87(2)(b).
 - Seven allegations of Force – Physical force have been pleaded against Sergeant Leite. Specifically, it was unfounded and exonerated in 201808095, exonerated in 201113619, unsubstantiated in 201410919, and is alleged in open investigations § 87(2)(g) and 202104696. In the current case, it was alleged that Sergeant Leite used physical force against § 87(2)(b).

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 8, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident. (BR 18)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 09

Investigator: <u>Christopher Olmsted</u>	Investigator <u>Chris Olmsted</u>	<u>06/27/2022</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Monique West</u>	IM <u>Monique West</u>	
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date